

How Does 421a Fit Into Creating Affordable Housing Opportunity in NYC?

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Table of Contents

- Background
 - Housing Crisis
- Findings
 - Policy Tools for Creating Affordable Housing Opportunity
 - Tax Incentives
 - Zoning
 - Capital Subsidy
 - Rental Assistance
 - Key Policy Issues for Reforming 421a
- Key Takeaways
- Appendix



Background

In 2022, NYHC launched the NYC Housing Tracker to analyze affordable housing production in NYC by Council District. Through the Tracker, it became clear that significant disparities exist between neighborhoods in producing affordable housing opportunity.

In low-income neighborhoods, HPD capital subsidy programs are bringing critical investment to create affordable housing. The Mandatory Inclusionary Housing Program, paired with the 421a Real Estate Tax Abatement, is a major contributor to affordable housing production in high-income neighborhoods. Even with these dual strategies to invest in low-income areas and leverage the market in high-income areas, many neighborhoods still produce barely any affordable housing at all.

With the recent launch of Mayor Adams' "City of Yes" zoning text amendment to spur more housing production in *every* neighborhood, it is clear that zoning reforms will not reach their full potential to produce rental housing without a complimentary as-of-right rental tax abatement, which expired in 2022.

This policy brief will explore how 421a fits into NYC's affordable housing policy toolkit to create affordable housing opportunity in NYC and key issues for reforming an as-of-right rental tax abatement.



NYC has 4 primary tools to create new affordable housing opportunities.



Tax Incentives

As-of-right tax incentives can influence the market to achieve public policy goals like affordable rental housing.

2,700 Annual Average Affordable 421a Units¹



Zoning

Land use rules can restrict or encourage housing supply. Mandatory Inclusionary Housing requires affordability.

17,350 affordable units slated in 2016-2022 rezonings out of 33k total².



HPD Subsidies

Discretionary HPD capital funds and tax abatements paired with other funds create affordable housing.

6,500 Annual Average HPD New Construction Units³



Rental Assistance

Vouchers, like Section 8 Housing Choice Vouchers and City FHEPS, help renters afford housing costs.

14,500 Lease Ups in 2023⁴

These tools often work together to meet different market needs.



Affordable Housing Supply

Mayor Adams' moonshot goal of adding 500k new homes over a decade, means 50k units per year, most market rate.

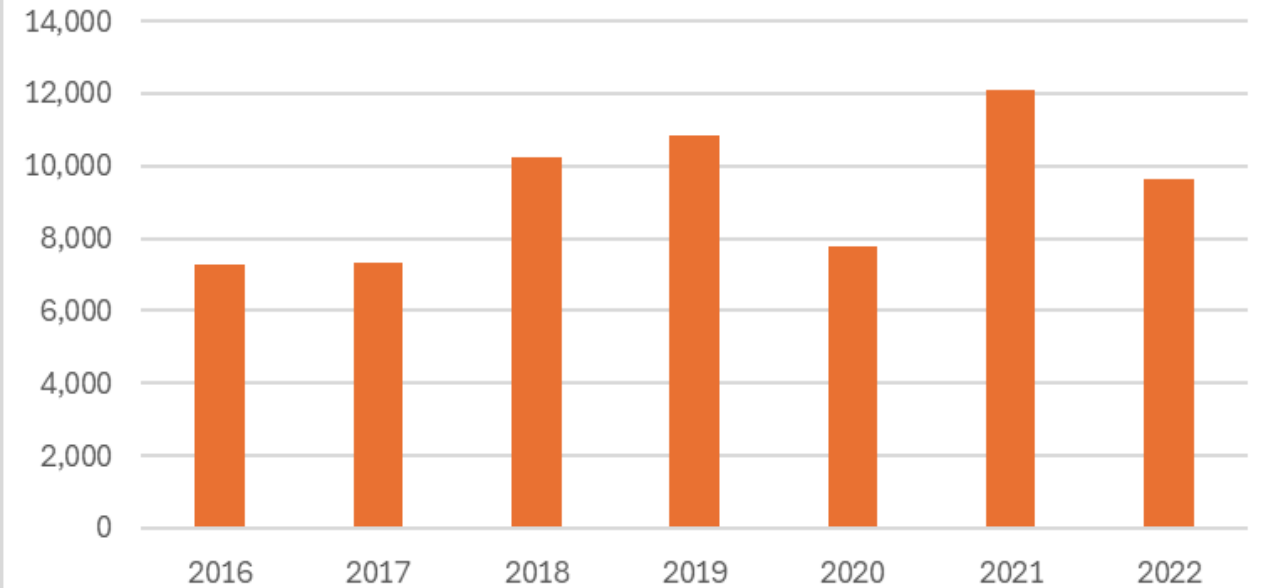
Since 2016, NYC has produced about 9,300 new affordable homes annually. HPD subsidizes roughly 6,500 units; 421a creates about 2,700 units, sometimes with inclusionary housing; and inclusionary housing on its own adds less than 80 units.

Without a tax incentive, NYC loses 2,700 new affordable units per year, 30% of new affordable housing.

Including market rate, 421a produced more than 117,000 units, accounting for 70% of new multifamily construction from 2010-2020⁵.

As-of-right tax incentives and additional zoning capacity are *critical* to adding housing supply and producing affordable housing at the speed and scale needed.

HPD Affordable Housing New Construction Starts



Source: NYC Open Data: Affordable Housing Production by Building

Subsidized affordable housing alone cannot solve NY's housing crisis.



Affordable Housing Production

Strategies to produce affordable housing differ in high- and low-cost neighborhoods. In high-cost neighborhoods, the City leverages the strong real estate market to require affordable housing through tax and zoning incentives. In low-cost neighborhoods, the City invests capital subsidies to cover construction costs and support below market rents.

Much of the new affordable housing is built in neighborhoods where zoning allows medium- to high-density residential districts, and where there are opportunities to develop on public or underutilized land. **All new construction of affordable housing requires tax abatements.**

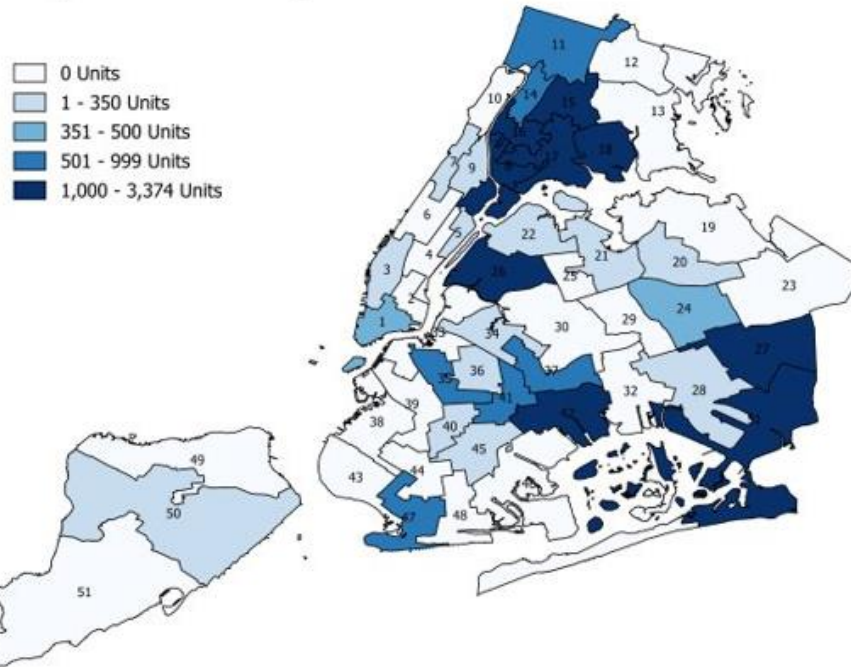
- In higher cost neighborhoods affordable housing is generated through the *as-of-right* **421a Tax Incentive** often paired with the **Mandatory Inclusionary Housing (MIH) Program**, where market rate projects are required to include affordable housing in return for additional zoning capacity. Property tax relief is necessary to make these projects feasible⁶.
- In lower cost neighborhoods, where land prices are cheaper, **HPD Capital Subsidy Programs** typically use the *discretionary* **420c Tax Abatement** to build 100% affordable mixed-income projects which can take years to get approvals and financing.

Using HPD Capital Subsidies to build affordable housing in higher cost neighborhoods costs 3 times more subsidy,⁷ which means less capital for low-income areas.

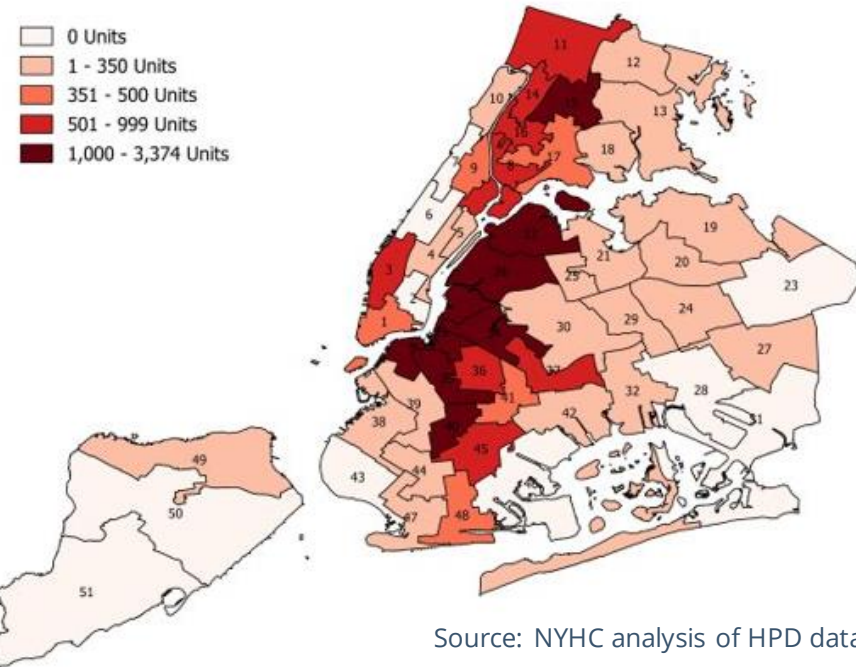


HPD Capital Invests In Low Income Neighborhoods While 421a Produces Affordable Housing in Higher Income

New Affordable Housing – HPD Capital Subsidy Programs, Jan. 2016 – July 2022



New Affordable Housing – 421a Program, Jan. 2016 – July 2022



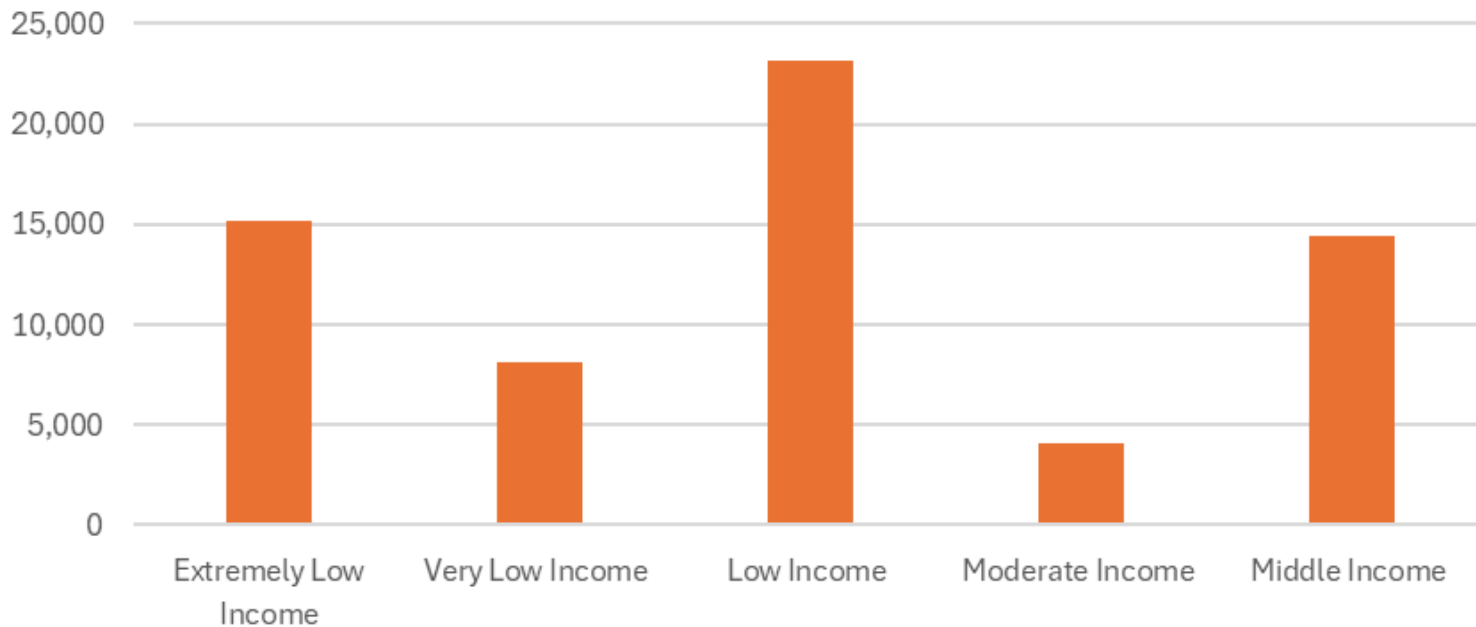
Source: NYHC analysis of HPD data

Districts with highest 421a unit production have a median income of \$82,000 and 35% of residents were white and 52% were Black or Latino. In districts with highest HPD subsidized units, the median income is \$44,000 and 8% of residents are white and 84% Black or Latino⁸. The City has identified 421a as a tool to combat residential segregation⁹. **Without a tax incentive, affordable housing will be concentrated in the lowest income neighborhoods.**



Most Affordable Housing Is for Households Earning <\$100k but Most 421a Affordable Units Are for >\$100K

HPD Affordable Housing New Construction by Income:
2016 - 2022



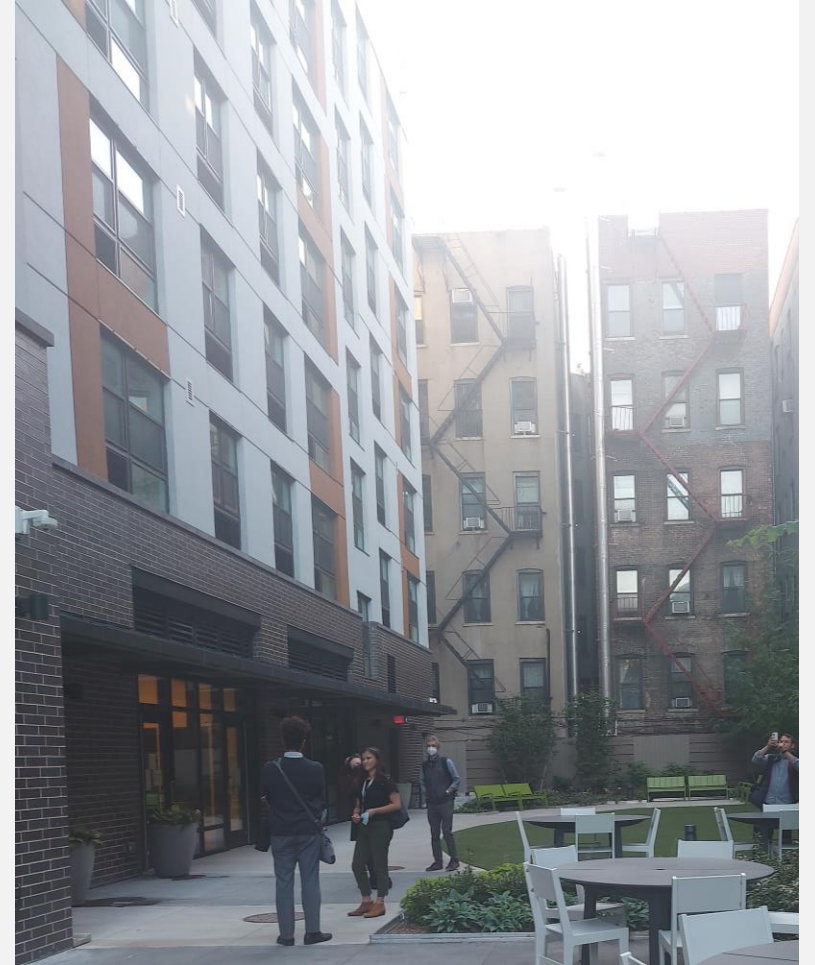
Source: NYC Open Data: Affordable Housing Production by Building

- Most of HPD's subsidy goes to low income, very low income and extremely low income households.
- The 421a program offered options requiring 25-30% of the units be affordable to households earning 40-130% AMI. 30% of units at 130% AMI was not available in Manhattan south of 96th St with flexibility to restrict it in other areas.

The 421a option used most by developers was 30% of units at 130% AMI.

Key Takeaways

1. Without an As-of-Right Tax Incentive Affordable Housing Production Will Drop and Affordable Housing Will Be Concentrated in Low Income Neighborhoods, leaving higher income neighbors off the hook to produce any affordable housing.
2. Many 421a "affordable units" are not affordable to low-income households.

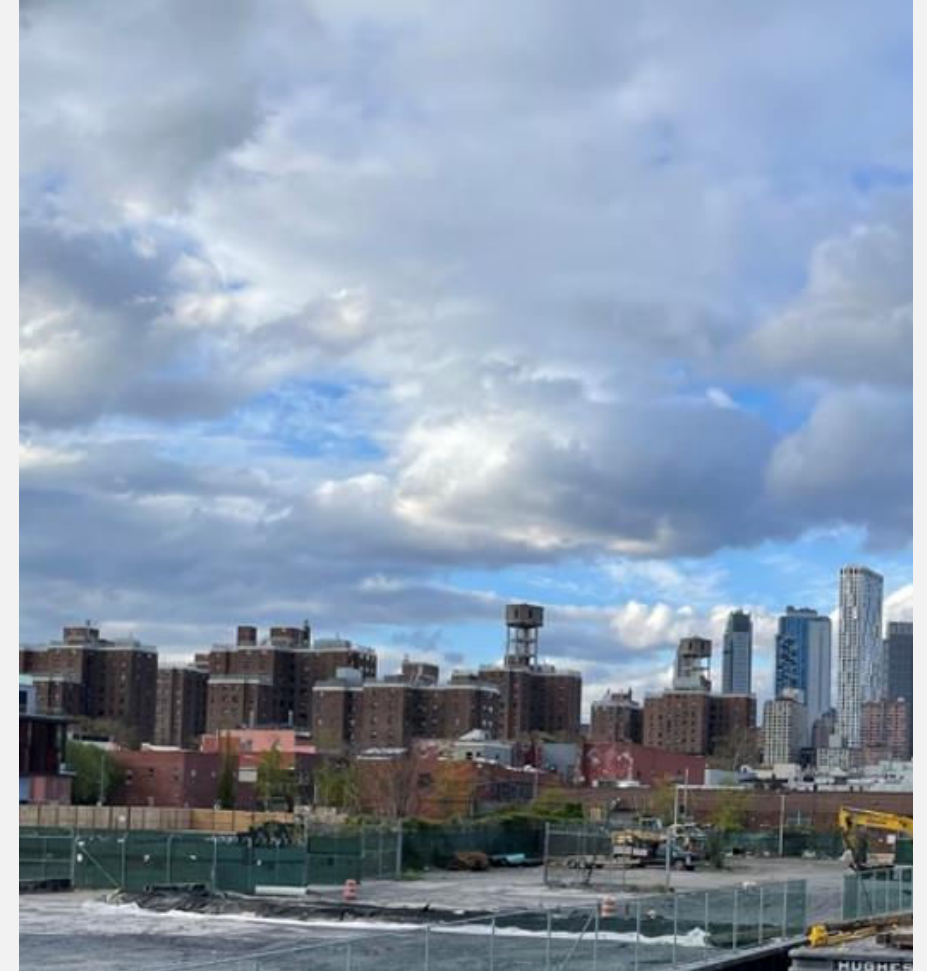


Zoning

NYC has been effective in adding affordable housing through:

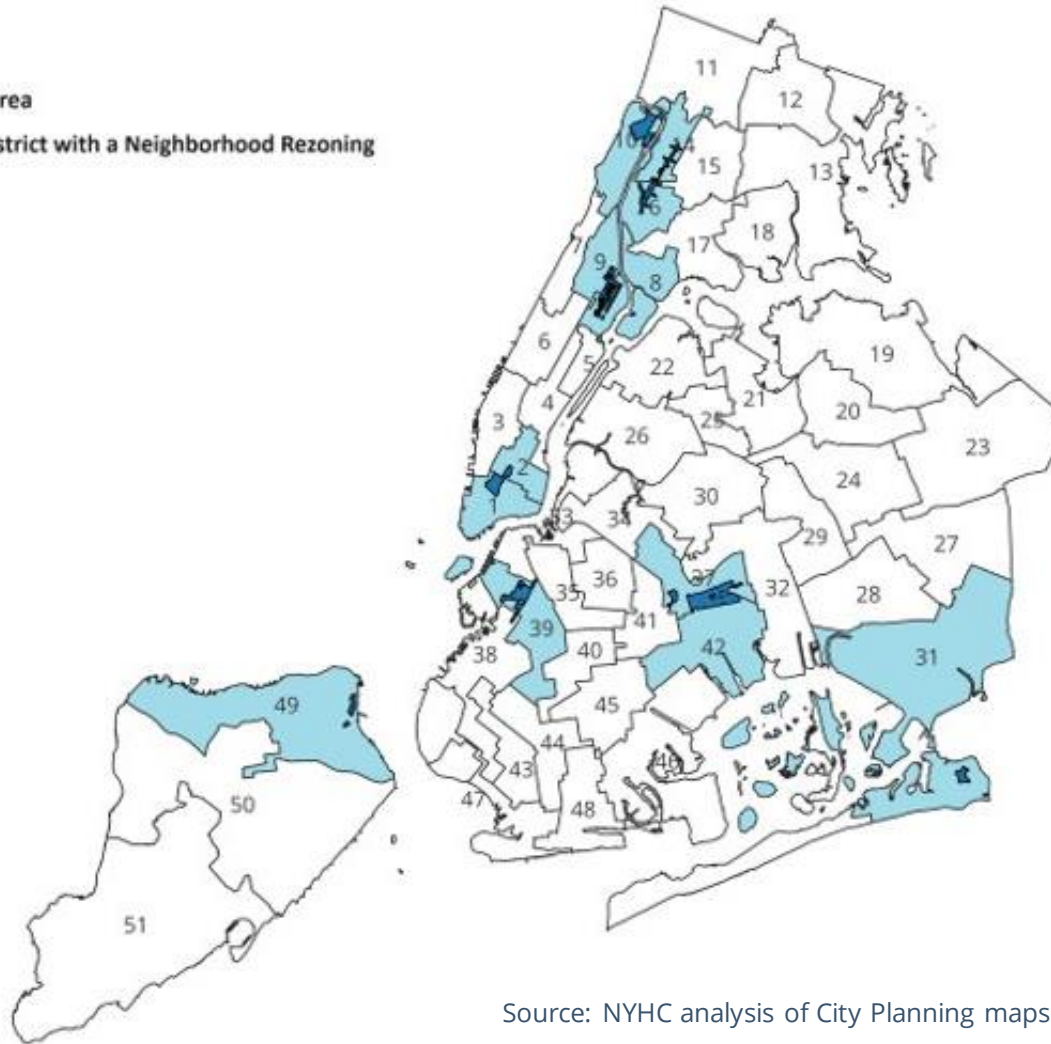
- **Neighborhood Rezoning**s triggering Mandatory Inclusionary Housing (MIH) to offer additional density while requiring affordable housing.
- **Site-Specific Zoning Applications** also trigger MIH.
- **Citywide Zoning Text Amendments** can change rules citywide creating more favorable zoning rules for housing development.

NYC's ability to leverage the market through zoning actions has relied on an as-of-right tax incentive for rental housing development.



Neighborhood Residential Rezoning: 2016 - 2022

- Rezoned Area
- Council District with a Neighborhood Rezoning



Source: NYHC analysis of City Planning maps

33,000 housing units, including 17,350 affordable, are slated to be built through recent rezonings¹⁰.

2016 - 2022 rezonings require Mandatory Affordable Housing.

- East New York
- Downtown Far Rockaway
- East Harlem
- Jerome Avenue
- Inwood
- Bay Street Corridor
- Soho/Noho
- Gowanus

Future MIH affordable housing units will not get built without an as-of-right tax abatement.



Site-Specific Zoning Applications

MIH applies to private zoning applications which trigger affordability requirements. The application requires City Council approval in a public land use process in which communities often negotiate terms to meet community needs in larger projects. Successful examples of community negotiations leading to greater affordability and other benefits:

- **Innovation Queens:** Redevelopment of underutilized commercial sites will add 3,000 homes with 45% affordable negotiated by the Council Member, far more than 25-30% required by MIH and requiring public subsidy. In addition, community benefits include a \$2 million fund¹¹.
- **Hallets North:** The Council Member negotiated deep affordability with 355 of the 1340 units affordable, community space for local nonprofits to offer a job incubator program and \$1 million to the Astoria Houses public housing¹².

Without an as-of-right tax abatement, community negotiations in recent ULURP approvals will be undermined as projects stall.

Mayor Eric Adams's proposal to update the zoning code to build "a little more housing in every neighborhood".

- **Universal Affordability Preference** would allow buildings to add 20% more housing, but only if the additional units are affordable.
- **Office to Residential Conversions** make it easier for vacant offices and commercial buildings to become homes, including those built after 1961.
- **Town Center Zoning-** Regulations to legalize new housing above businesses on commercial streets will foster the creation of new mixed-use corridors in neighborhoods where rules prohibit this.
- **End Parking Mandates**, a costly and prohibitive barrier to new housing.
- **Accessory Dwelling Units** (backyard cottages, garage conversions) can add new homes and support homeowners.
- **Transit Oriented Development** would legalize 3-5 story buildings on large lots near public transit, on wide streets or corner lots.
- **Campuses** would more easily be able to add new buildings.

"City of Yes" Zoning Amendment

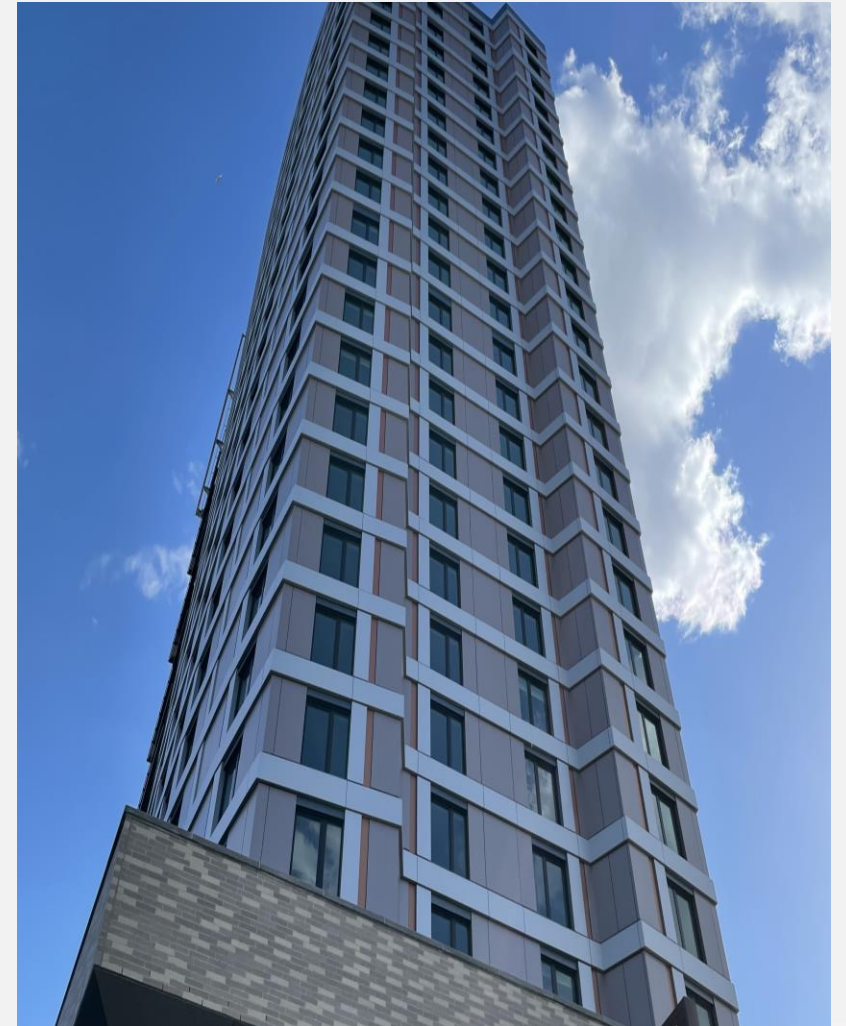
Without an as-of-right tax incentive to build rental housing, proposed City of Yes changes encouraging more residential housing will have diminished impact on the rental market.



Key Takeaways

3. Without an as-of-right real estate tax abatement to help offset the cost of constructing new housing, NYC's zoning powers are undermined.

4. Affordable housing and community benefits negotiated in public land use approvals are at risk.



Rental Assistance

Federal Section 8 Housing Choice Vouchers and NYC's CityFHEPS program provide rental assistance to tens of thousands of New Yorkers. **In FY 2023, rental assistance vouchers helped 14,500 new households.**

- Section 8 & CityFHEPS both use Fair Market Rents (FMR) set by HUD and limit voucher rent levels. In 2023, FMR was \$2,451 for a 2-bedroom
- Both programs serve very low- and extremely low-income households.
 - In Section 8, 75% of new vouchers must serve households earning 30% AMI or below. All new vouchers serve households under 50% AMI. 158,000 vouchers are in use in NYC but only ~6,000 free up each year¹³.
 - CityFHEPS helps households earning up to 200% FPL pay rents. In FY 2023, more than 10,200 households used CityFHEPS to exit shelter or remain housed¹⁴.

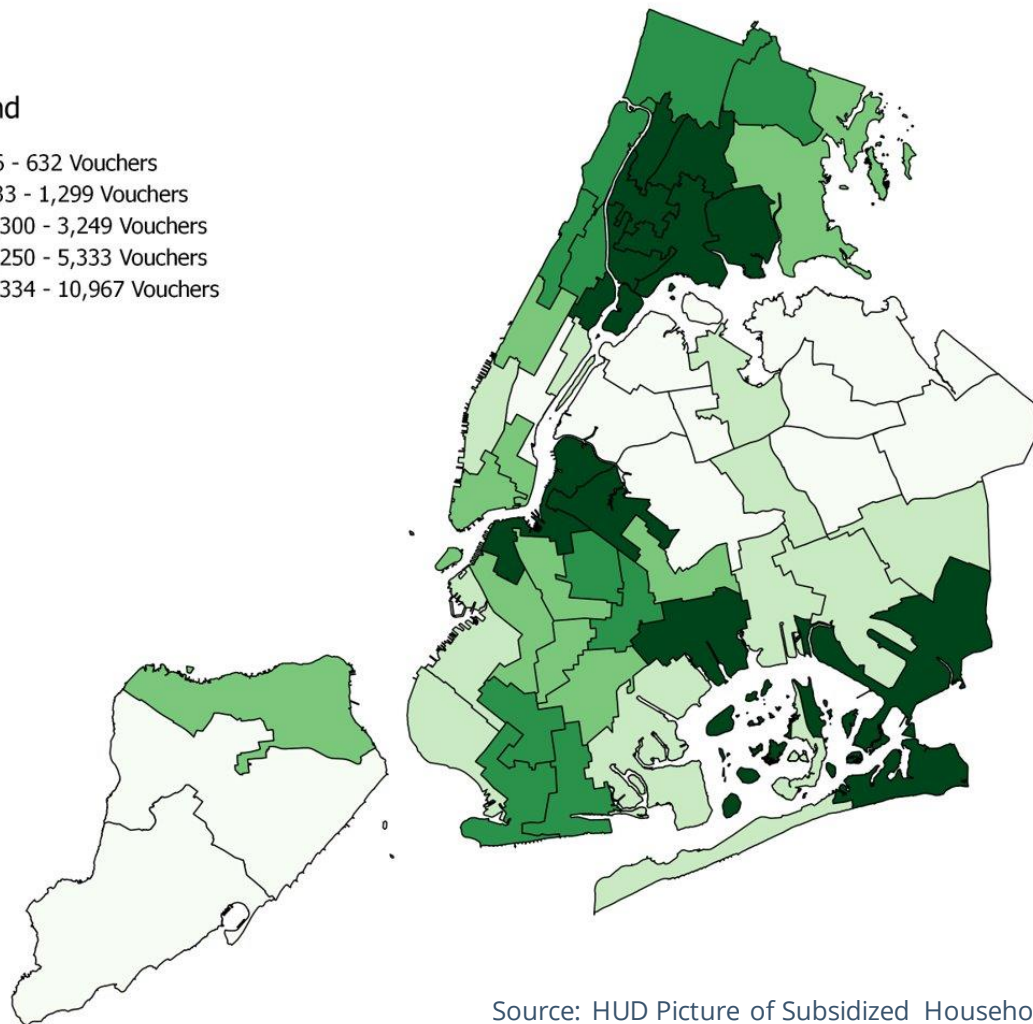
Vouchers can offer a household immediate housing opportunity in the rental market or to help households retain their current housing and afford the rent.

Vouchers can also help finance new affordable housing and help extremely low-income households access affordable housing with income levels higher than they can afford.



Section 8 Housing Choice Vouchers in New York City, 2022

Legend



Source: HUD Picture of Subsidized Households

Rental Assistance

While vouchers can be a powerful tool for housing mobility, Section 8 Voucher usage is concentrated in low-income neighborhoods in NYC. Lack of supply is a barrier to voucher effectiveness.

- The Council Districts with more than 3,250 Section 8 vouchers have a smaller share of white residents (16% less) and a greater share of black and Hispanic residents on average (15% more) and a median income that is \$35,700 less than districts with fewer than 3,250 Section 8 vouchers¹⁵.
- A third of households were unsuccessful in using their voucher to lease an apartment in 2021¹⁶.
- NYC's Emergency Housing Voucher median lease-up time was 156 days¹⁷.
- In Dec 2023, 2.3% of available 2 bed apts were at or below FMR according to Zillow¹⁸.

Key Takeaways

5. The effectiveness of vouchers as a tool to create housing opportunity is impacted by supply constraints.

6. Vouchers are concentrated in low-income neighborhoods. An As-of-Right Tax Incentive setting affordable units at FMR could expand housing opportunity in a wider range of neighborhoods.



Key Policy Issues for a New Tax Incentive to Add Rental Supply

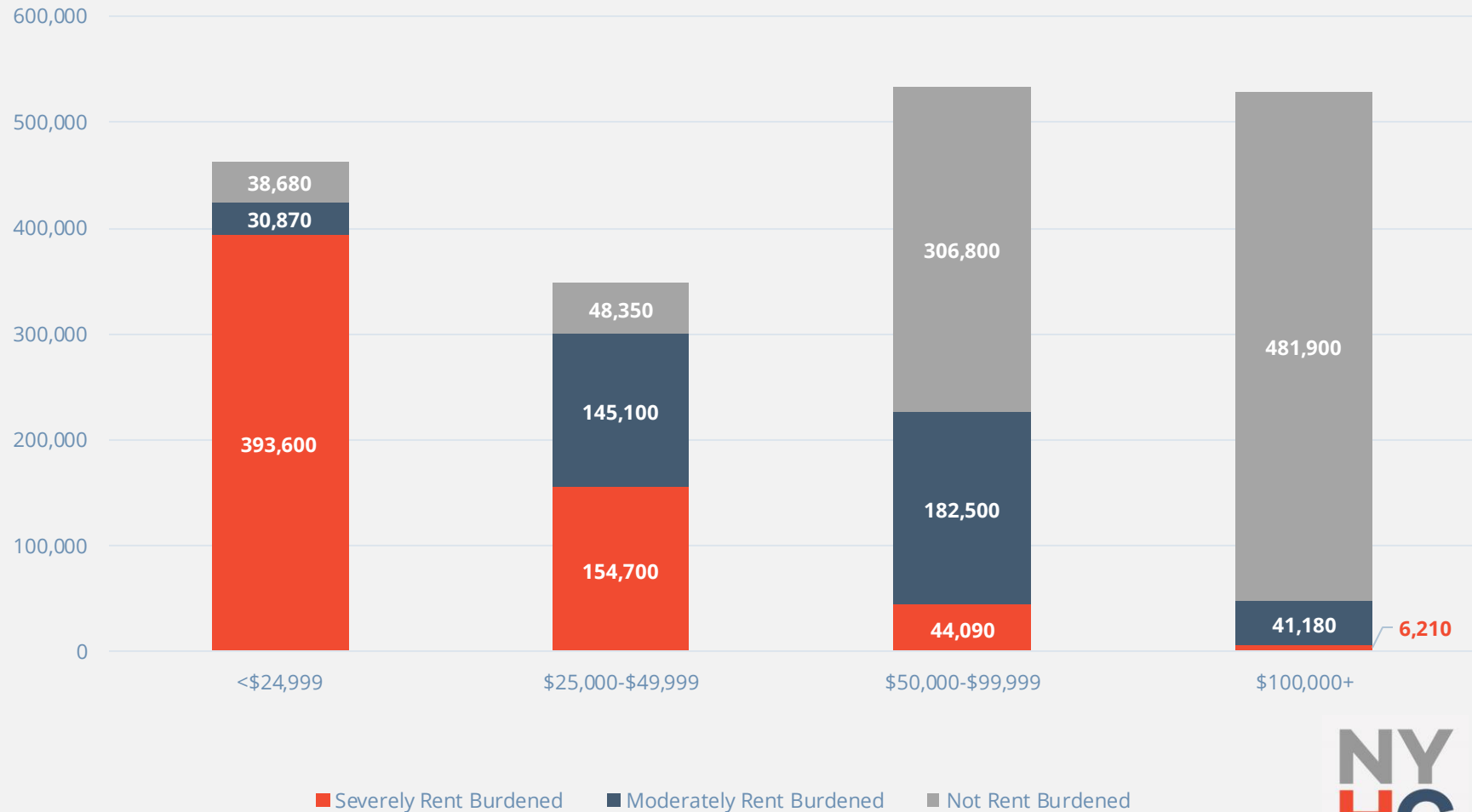
- **As-of-Right** – A new tax incentive must be as-of-right to spur significant development of affordable housing. As-of-right tax abatements offer certainty to secure financing and build more quickly.
- **Affordability** – The income levels and the percent required as affordable must make financial sense for the project while meeting community needs for affordable housing. The current 421a allows developers to set rents affordable to households at 130% AMI - far higher than the median income of NYC renters.
- **Financial Feasibility** – A new incentive must strike an appropriate balance between public benefit and forgone tax revenue while being generous enough to encourage rental housing over condominiums and cover the costs of the affordable rents.
- **Sub Market Cross Subsidy Challenges** – In the highest rent neighborhoods, market rents can cross-subsidize deeply affordable rents. In neighborhoods with middle market rents, the ability to cross-subsidize diminishes and buildings cannot support the same percent of affordable units or the same level of affordability as the highest rent neighborhoods. Any new tax incentive will need to incentivize production in all types of neighborhoods.



Income Targeting Based on Greatest Need

- NY's affordability crisis severely impacts the lowest-income renters.
- The greatest supply need is for more apartments affordable to households earning below the median renter income of \$50k.

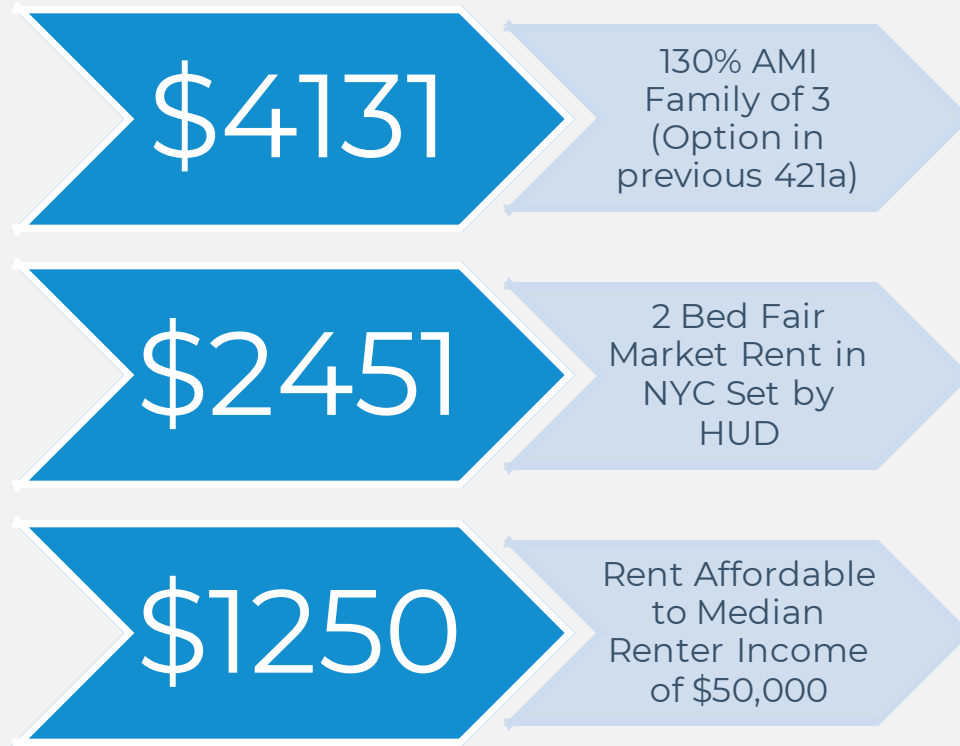
Rent Burdened Households in New York City



Source: 2021 NYC Housing and Vacancy Survey



Sub Market Cross Subsidy Challenges



- The last 421a program attempted to overcome the cross subsidy issue found outside of the highest rent neighborhoods by targeting affordable units to households earning 130% AMI. This produced a glut of apartments with \$4000 rents and backlash to affordable housing since NY's average renter could not possibly afford this rent.
- A new program should create affordable housing to meet the greatest need, which is for renters earning less than \$50k, but the rent they can afford will be too low to work in some submarkets. However, setting affordable rents at FMR may achieve both goals of affordability and sufficient building income.
- A financial feasibility study can show the effectiveness of FMR in various market types and the percentage of units that could be made available to voucher holders. A one size all approach will not work in a city with wide disparities between neighborhood rents.

Key Takeaways Summary

- Without an as-of-right tax incentive affordable housing production will drop and affordable housing will continue to be concentrated in low income neighborhoods.
- Without an as-of-right real estate tax abatement to help offset the cost of constructing new housing, NYC's zoning powers are undermined and affordable housing and community benefits negotiated in public land use approvals are at risk.
- Many 421a "affordable units" are not affordable to low-income households.
- Vouchers as a tool to create housing opportunity is impacted by supply constraints and their usage is concentrated in low-income neighborhoods.
- A new as of right tax incentive must meet affordable housing needs while being financially feasible and incentivizing production in all types of neighborhoods.
- An as-of-right tax incentive setting affordable units at FMR could expand housing opportunity and solve cross subsidy challenges.



Appendix

What is the Affordable New York Program (421a)?

421a is an as-of-right partial real estate tax exemption designed to encourage new residential rental housing construction and to require affordable housing development. Rental projects with units that are affordable for a 35-year period receive a 100% exemption during construction for up to 3 years, a 100% exemption for the first 25 years, and for the last 10 years, an exemption equal to the percentage of affordable units in the project.

Affordability options are based on the size and location of projects:

Less than 300 Units or outside enhanced affordability areas:

Option A – 25% affordable: 10% @40% AMI, 10% @60% AMI and 5% @130% AMI

- *Precludes any governmental subsidies other than tax-exempt bond proceeds and 4% tax credits.*

Option B – 30% affordable: 10% @70% AMI, 20% @130% AMI.

Option C - 30% affordable @130% AMI.

- *Precludes any government subsidies.*
- *Can't be located south of 96th St. in Manhattan or any other area established by local law.*

More than 300 Units:

Option E - 25% affordable: 10% @40% AMI, 10% @60% AMI and 5% @120% AMI

- *Precludes any governmental subsidies other than tax-exempt bond proceeds and 4% tax credits.*
- *Available within enhanced areas.*

Option F – 30% affordable: 10% @70% AMI, and 20% @130% AMI.

- *Available within enhanced areas.*

Option G - 30% affordable @130% AMI.

- *Available within Brooklyn CB 1 & 2 and Queens CB 1 & 2.*
- *Precludes any governmental subsidies.*

Projects that are both over 300 units and in enhanced affordability areas must also meet certain wage requirements. They receive a 100% exemption for 35 years after construction and affordability restrictions must remain in place for 40 years. Developers can opt out of this requirement by either setting aside at least 50% of units for up to 120% AMI or entering into a Project Labor Agreement.



Endnotes

1. Data provided by HPD to NYHC
2. NYHC analysis of DCP rezoning proposals 2016 – 2022 and DCP Zoning Commitment Tracker - <https://morr.maps.arcgis.com/apps/MapSeries/index.html?appid=e53a9d13cad442829c5db6c7bc1b16d8>
3. Data provided by HPD to NYHC
4. NYC MMR data and NYC Open data (Special Initiatives Moveouts and Placements)
5. Raetz, Hayley & Matthew Murphy, "The Role of 421-a during a Decade of Market Rate and Affordable Housing Development," NYU Furman, February 2022. https://furmancenter.org/files/publications/The_Role_of_421-a_Final.pdf
6. "Market and Financial Study: NYC Mandatory Inclusionary Housing," NYC HDC, September 2015. https://www.nyc.gov/assets/planning/download/pdf/plans-studies/mih/bae_report_092015.pdf
7. Analysis by Forsyth Street: Comparing city subsidy for a project in a high-cost area that would necessitate high-rise construction in a high-density zone compared to a typical ELLA in a low/moderate income neighborhood. The high-cost area project would also use more LIHTC.
8. NYHC analysis of data provided by HPD
9. NYC Planning, "Consolidated Plan: 2016 Annual Performance and Evaluation Report Volume 1," December 1, 2017. <https://www.nyc.gov/assets/planning/download/pdf/about/consolidated-plan/2016-conplan-apr-vol1.pdf?r=apprfinal>
10. NYHC analysis of DCP rezoning proposals 2016 – 2022 and DCP Zoning Commitment Tracker - <https://morr.maps.arcgis.com/apps/MapSeries/index.html?appid=e53a9d13cad442829c5db6c7bc1b16d8>
11. <https://council.nyc.gov/press/2022/11/21/2306/>
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13. NYC Mayor's Management Report FY 2023
14. NYC Open Data - Special Initiatives Moveouts and Placements: <https://data.cityofnewyork.us/Social-Services/Special-Initiatives-Moveouts-and-Placements/vnwq-9b7b>
15. NYHC Analysis of HUD Picture of Subsidized Households data
16. Provided to NYHC by NYCHA and HPD
17. HUD Emergency Housing Voucher (EHV) Data Dashboard – showing median lease-up for NYCHA vouchers
18. Data provided by Zillow Group

